IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 375 of 1994.

Date of decision:19.12.2005.

Sh. Fankra & Ors. ... Appellants

Versus

Smt. Kubja Devi & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the appellants : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.

For the respondents: Mr. K.D. Sood, Advocate, for respondents No. 2,3 and 5.

Mr. Ashutosh Burathoki, Additional Advocate General, for respondent No. 6.

V.M. Jain, J.:

This Regular Second Appeal has been filed by the plaintiffs against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiffs was partly decreed and feeling dissatisfied with the judgment and decree of the trial Court, the appeal filed by the plaintiffs was dismissed by the learned District Judge, upholding the judgment and decree of the trial Court.

The facts which are relevant for the decision of the present appeal are that the plaintiffs had filed a suit for declaration and injunction against the defendants, with the allegations that order dated 17.7.1975

[1]Whether reporters of Local Papers may be allowed to see the judgment?

passed by the S.D.O.(Civil) Rohru and mutation No. 7289 dated 19.3.1986 be declared null and void and a decree for permanent injunction be passed restraining the defendants from obstructing the flow of water of the Kuhal passing through the suit land and the defendants be also restrained from cutting trees standing by the side of the said Kuhal. It was alleged by the plaintiffs that a water channel was passing through the suit land, which was in the user of the plaintiffs and their predecessors-in-interest since time immemorial and a number of trees were also standing by the side of the Kuhal in question, which gave protection to the said Kuhal. It was alleged that the defendants started cutting trees in question and also started interferering in the right of the plaintiffs qua the user of the water passing through the said channel. It was alleged that the land in dispute was acquired by defendant No. 1 Ranjew by way of Nautor in an illegal manner and the Tatima qua the suit land was prepared by the revenue staff by suppressing material facts existing at the spot and the said Tatima was ordered to be amended by the S.D.O.(Civil), Rohru. It was alleged that the said Tatima was not amended as per the directions of the S.D.O.(Civil), Rohru and in this manner, the lower revenue staff had not only disobeyed the order of S.D.O.(Civil) Rohru but had also caused prejudice to the rights of the plaintiffs by allotting the land in dispute in favour of Ranjew, defendant, by way of Nautor. It was alleged that it was on 31.1.1986 that the defendants had broken the land in dispute for cultivation and had started cutting trees standing on the suit land and causing damage to the Kuhal in question.

The said suit was contested by defendants No. 1 to 5 by filing joint written statement, taking up various preliminary objections. On merits, it was alleged that the suit land had been sanctioned in favour of

Ranjew, defendant, in a lawful manner and the said land was brought under cultivation by the defendants. It was denied that there was any illegality in sanctioning of the suit land in favour of defendant No.1. It was further alleged that infact before the grant of Nautor, the villagers including the plaintiffs were heard by the revenue officials and Nautor was granted in accordance with rules and regulations. It was alleged that the plaintiffs as well as the defendants were enjoying the water from the Kuhal in question without any interference from any corner. It was further alleged that the plaintiffs had no right, title or interest qua the suit land and the plaintiffs could not challenge the grant of Nautor in favor of defendant No. 1 Ranjew, which was sanctioned after proper enquiry in his favour. A separate written statement was filed by defendant No.6 – State of H.P., taking up various preliminary objections. On merits, it was alleged that the plaintiffs were taking water from the Kuhal in question in an illegal manner, since the said Kuhal was passing through the government land. It was further alleged that the suit land was sanctioned by way of Nautor in favour of Ranjew, defendant on 4.9.1975 and that the plaintiffs and their predecessors-in-interest had not objected to the grant of same in favour of Ranjew, defendant. It was further alleged that the suit land was Banjar Kadim and there was no question of the Kuhal in question passing through the land in dispute. It was further alleged that the suit land was sanctioned in favour of Ranjew, defendant, by the revenue officials, after verifying the spot position and that Ranjew, defendant, had deposited the compensation of the said land and had become owner thereof in lawful manner. It was further alleged that the order passed by the S.D.O.(Civil), Rohru was legal and valid and the Tatima was also sanctioned in a lawful manner.

Various issues were framed. Both the sides led evidence. After hearing both sides and perusing the record, the learned trial Court partly decreed the suit of the plaintiffs and defendants No. 1 to 5 were restrained from interfering in the user of the water of the plaintiffs qua the suit land. However, the suit of the plaintiffs for the grant of declaration with the regard to the grant of Nautor in favour of Ranjew, defendant, was dismissed. Dissatisfied with the judgment and decree passed by the trial Court, the plaintiffs filed appeal. The said appeal was dismissed by the learned District Judge, upholding the findings of the trial Court. Aggrieved against the same, the plaintiffs filed the present Regular Second Appeal in this Court.

Vide order dated 14.11.1994, the appeal was admitted to a regular hearing, on the following substantial question of law:-

> "As to whether the lower Appellate Court mis-construed both oral as well as documentary evidence. The appellants are allowed to urge any other substantial question of law at the time of hearing."

I have heard the learned counsel for the parties and have gone through the record carefully.

The learned counsel appearing for the plaintiffs – appellants submitted before me that the revenue officials had erred in law in sanctioning the Tatima on the basis of the order passed by the S.D.O.(Civil), Rohru, while granting the land in dispute by way of Nautor in favour of Ranjew, defendant, inasmuch as the S.D.O. (Civil) could not have delegated the power of sanctioning Tatima to the Tehsildar. However, I find no force in these submissions of the learned counsel appearing for the plaintiffs – appellants. Ext. PB is the copy of the order

dated 17.7.1975 passed by the S.D.O. (Civil) Rohru, vide which the suit land was sanctioned in favour of Ranjew, defendant, by way of Nautor, for the purpose of horticulture on payment of Najrana. In the said order, it was recorded that the Gram Panchayat after considering the objections of the right holders had recommended the case for sanction of Nautor in favour of Ranjew, applicant, and the Revenue Agency had also recommended the case for sanction in favour of the applicant and the only objection raised by the Forest Department was with regard to two trees standing on the land in question, but the applicant was ready to utilize the land for horticulture purpose and also was ready to pay the cost of the trees. Resultantly, the land in dispute was sanctioned in favour of Ranjew, applicant, by way of Nautor, for the purpose of horticulture on payment of Najrana and the cost of the trees to be assessed by the Forest Department. It was further directed that the grantee shall be liable to pay annual land revenue and cesses etc. from the date of issue of Patta. It was further directed that Tehsildar, Jubbal shall get the Tatima amended accordingly. Ext. PW10/A is Tatima, which was prepared by the revenue officials in pursuance of the aforesaid order dated 17.7.1975 passed by the S.D.O.(Civil), Rohru. However, subsequently the same was corrected, since there was a mistake therein and thereafter, amended Tatima was prepared in respect of the suit property in favour of Ranjew, defendant. Nothing has been pointed out before me to show that the Tatima prepared by the revenue officials was contrary to the orders passed by the S.D.O.(Civil) Rohru or that in what manner the revenue officials concerned were not authorized to prepare Tatima, since the orders granting the suit land by way of Nautor had been passed by the competent authority i.e. S.D.O. (Civil), Rohru. In the absence of any

material on the record to show that the Tatima prepared by the revenue officials was not according to law, in my opinion, the plaintiffs – appellants cannot be allowed to say that the Tatima so prepared was contrary to law.

Besides the merits of the case referred to above, in my opinion, the plaintiffs had no concern with the suit land and as such, they cannot be allowed to urge that the allotment of the suit land by the S.D.O. (Civil), Rohru was illegal or otherwise. Admittedly, the State of Himachal Pradesh was owner of the suit land. The S.D.O.(Civil) had allotted the suit land to Ranjew, defendant, by way of Nautor after following the procedure prescribed by law. There is nothing on the record to show that the plaintiffs were also claimants for the said allotment. In this view of the matter, the plaintiffs cannot be allowed to urge that the allotment of the suit land in favour of Ranjew, defendant, was not according to law, especially when the State of Himachal Pradesh (defendant No.6) in its written statement had admitted the allotment of the suit land in favour of Ranjew, defendant, by way of Nautor, under the orders of the S.D.O. (Civil), which had been claimed to be legal and valid.

In view of the detailed discussion above, the Courts below were perfectly justified in not granting the decree for declaration in favour of the plaintiffs. So far as the relief of injunction regarding Kuhal is concerned, the same was granted in favour of the plaintiffs by the learned trial Court.

In view of the detailed discussion above, in my opinion, it could not be said that the lower Courts had misconstrued the oral as well as documentary, while declining the relief of declaration in favour of the plaintiffs. Thus, the substantial question of law, which was framed on

14.11.1994 while admitting the appeal to a regular hearing, is decided against the plaintiffs – appellants.

No other point has been urged before me in this appeal, nor any other substantial question of law arises for determination in this appeal.

For the reasons recorded above, finding no merit in this appeal, the same is hereby dismissed.

CMP No. 368 of 2003:

In view of the dismissal of the main appeal, this application also stands disposed of.

(V.M. Jain),
Judge

December 19, 2005
(BSS)